

HOUSE BILL REPORT

HI 159

As Reported By House Committee On:

Corrections

Sponsors: People of the State of Washington.

Brief History:

Committee Activity:

Corrections: 1/10/95, 1/17/95 [DP].

HOUSE COMMITTEE ON CORRECTIONS

Majority Report: Do pass. Signed by 9 members: Representatives Ballasiotes, Chair; Blanton, Vice Chair; Sherstad, Vice Chair; Quall, Ranking Minority Member; Tokuda, Assistant Ranking Minority Member; Koster; Radcliff; K. Schmidt and Schoesler.

Minority Report: Do not pass. Signed by 2 members: Representatives Cole and Dickerson.

Staff: Rick Neidhardt (786-7841).

Background: Initiative 159 amends numerous statutes dealing with penalties for armed crime. Many of these same statutes were amended in 1994 (E2SHB 2319) to increase penalties for armed crime. Some of the 1994 amendments were conditioned on the passage of a funding referendum last November. The voters approved Referendum 43 at last November's election, thereby retaining the increased penalties in law. For this reason, references in this analysis to current law include the effects of the 1994 legislation.

Deadly Weapon Enhancements. Under the Sentencing Reform Act, adult felony sentencing involves calculation of standard sentence ranges. For example, a standard range might be 12 to 14 months. Sentencing judges then use these standard ranges in sentencing a defendant, although under certain circumstances the judges can go above or below this range or impose an alternative sanction.

Under current law, standard sentence ranges are increased for certain crimes if the conviction includes a finding that the offender (or an accomplice) was armed with a deadly weapon. The following lengths of time are added to the standard range for the following crimes:

- Two years for rape 1, robbery 1, and kidnapping 1;
- 18 months for burglary 1;
- One year for escape 1, kidnapping 2, theft of livestock 1 or 2, drug offenses, burglary 2 committed in non-dwellings, and all violent offenses that are not otherwise eligible for the two-year or 18-month enhancement.

Other felonies do not receive these deadly weapon enhancements.

First Degree Reckless Endangerment. The crime of first degree reckless endangerment is committed by recklessly discharging a firearm from a motor vehicle in a manner which creates a substantial risk of death or serious physical injury.

The crime has a seriousness level of V, which yields a standard range of six to 12 months of confinement for a first-time offender. The crime is a class B felony (maximum punishment of 10 years of confinement).

Theft of Firearms. Under current law, theft of a firearm has a seriousness level of V, which yields a standard sentence range of six to 12 months for a first-time offender. The offense is a class C felony (maximum punishment of five years).

Possession of Stolen Firearms. Under current law, possession of a stolen firearm has the same penalty as theft of a firearm.

Unlawful Possession of a Firearm. Current law criminalizes the possession of a firearm by persons who have been previously convicted of certain offenses. The convictions that render this possession illegal are: serious offenses, domestic violence offenses, harassment offenses, felonies in which a firearm was used or displayed, felony drug offenses, and certain repeat DWI offenses. Possession of a firearm is also illegal for adults who were previously involuntarily committed under certain mental health laws and for people under the age of 18, subject to some exceptions.

Unlawful possession of a firearm does not currently include within its scope juveniles who were previously involuntarily committed for mental health treatment.

The crime of unlawful possession of a firearm has a seriousness level of III, which yields a standard sentence range of one to three months for a first-time offender. The crime is a class C felony (maximum punishment of five years).

Restoring Right to Possess Firearm. Under a law passed in 1994, certain people who would otherwise be covered by the statutory definition of unlawful possession of a firearm may have their right to possess a firearm restored.

People who are subject to unlawful possession of a firearm because they received three DWI convictions within a five-year period can have their rights restored by

petitioning the court and showing they have had five continuous years without further conviction for an alcohol-related offense.

People who are subject to unlawful possession of a firearm because they were previously involuntarily committed for mental health treatment can have their rights restored by petitioning the court and showing that the circumstances resulting in the commitment no longer exist and are not reasonably likely to recur.

The 1994 law does not provide similar procedures for the other classes of people who are subject to unlawful possession of a firearm.

Aggravated First Degree Murder. Aggravated first degree murder is defined as premeditated first degree murder coupled with the presence of additional "aggravating circumstances."

Current law specifies a list of aggravating circumstances, which includes: killing certain governmental officers; committing murder for pay; killing multiple victims; committing murder to conceal a crime or a person's identity; and committing murder during or immediately in flight from certain enumerated crimes, including residential burglary.

The sentence for aggravated first degree murder is either the death penalty or life imprisonment without possibility of release or parole.

Burglary. Under current law, first degree burglary is committed when a person unlawfully enters a dwelling, with intent to commit a crime, if the person either is armed with a deadly weapon or assaults another person. If these same acts are committed in a building other than a dwelling, the crime committed is instead second degree burglary.

First degree burglary has a seriousness level of VII, which yields a standard sentence range of 15-20 months for a first-time offender, although if the offender was armed, an additional 18 months is added to the standard range. First degree burglary is a class A felony (maximum punishment of life imprisonment).

Second degree burglary has a seriousness level of III, which yields a standard sentence range of one to three months for a first-time offender, although if the offender was armed, an additional 12 months is added to the standard range. Second degree burglary is a class B felony (maximum punishment of 10 years).

Sentencing Documents and Plea Agreements. Judgment and sentence forms are completed whenever a defendant is convicted of a felony. The forms state the crime of conviction and the sentence being imposed. In cases where a plea agreement is reached between the defendant and the prosecutor and is approved by the judge, the

judgment and sentence forms do not necessarily include the terms of the plea agreement.

The Sentencing Guidelines Commission is authorized to collect information from sentencing documents for all adult felons. The commission may further establish a computerized sentencing information system that tracks this information for each individual superior court judge.

Prosecuting Standards. Current law sets out recommended (non-binding) standards to guide prosecutors in making their charging decisions. The recommended standards distinguish between crimes against persons and other crimes. For crimes against persons, the standards recommend charges be filed, subject to some exceptions, if sufficient admissible evidence exists which, when considered in light of the most plausible, reasonably foreseeable defense, would justify conviction by a reasonable and objective fact-finder. For "crimes against property/other crimes," the standards recommend charges be filed if the admissible evidence is of such convincing force as to make it probable that a reasonable and objective fact-finder would convict after hearing all the admissible evidence and the most plausible defense that could be raised.

Current law lists 41 felonies as being crimes against persons, including various degrees of murder, kidnapping, assault, assault of a child, rape, rape of a child, robbery, arson, burglary, manslaughter, extortion, indecent liberties, incest, vehicular homicide, vehicular assault, child molestation, and other offenses.

Juvenile Offenders. Juvenile offenders who are prosecuted under the Juvenile Justice Act are sentenced according to a disposition scheme that is different from the adult sentencing scheme. Juveniles are directly subject to adult sentencing provisions only if they are prosecuted as adults.

As in the adult system, juvenile sentencing involves calculation of standard ranges. That calculation is based in part on the crime's "offense category" which is based on the seriousness of the offense. Unless the Legislature has specified an offense category for a particular offense, the offense category is determined by the offense class (A, B, C, gross misdemeanor, misdemeanor). Consequently, the offense category for theft of a firearm, possession of a stolen firearm, and unlawful possession of firearms is "C." The offense category for reckless endangerment in the first degree is "B." The Legislature can directly amend the juvenile disposition standards or can indirectly amend them by changing the classification of a crime that does not have specified offense category.

Another way the Legislature can indirectly affect the disposition scheme for juveniles is to create new crimes or degrees of crimes or to change the definition of crimes.

Summary of Initiative: Deadly Weapon Enhancements. The Initiative applies deadly weapon enhancements to all felonies, except for theft of a firearm, possessing a stolen firearm, unlawfully possessing a firearm, first degree reckless endangerment, possession of a machine gun, and use of a machine gun in a felony.

If the deadly weapon is a **firearm**, the enhancements are:

Five years for class A felonies;
Three years for class B felonies; and
18 months for class C felonies.

If the deadly weapon is **other than a firearm**, the enhancements are:

Two years for class A felonies;
One year for class B felonies; and
Six months for class C felonies.

Each of these enhancements is doubled for an offender who has previously received a firearm enhancement or a deadly weapon enhancement under these new provisions. For example, a class A felony committed with a firearm yields a 10-year enhancement if the offender has a previous conviction with a deadly weapon finding.

The deadly weapon enhancements are mandatory and cannot be served concurrently with any other sentence.

An offender cannot earn good-time credits or other earned early release time for any portion of the sentence that results from a deadly weapon enhancement.

First Degree Reckless Endangerment. The seriousness level is raised to level VII, which yields a standard sentence range of 15-20 months for a first-time offender.

Theft of Firearms. The seriousness level is raised to level VI, which yields a standard sentence range of 12-14 months for a first-time offender. The crime is changed from a class C felony to a class B felony, thereby increasing the maximum penalty to 10 years' imprisonment. Each firearm is to be treated as a separate offense.

Possession of Stolen Firearms. The crime is changed from a class C felony to a class B felony, thereby increasing the maximum penalty to 10 years' imprisonment. The seriousness level is unchanged, as the 1994 law (E2SHB 2319) already had set the level at V. Each firearm is to be treated as a separate offense.

Unlawful Possession of a Firearm. The crime is separated into two degrees.

Unlawful possession of a firearm in the first degree is committed when the person's previous conviction was for a crime from the following list:

- a crime that is defined as a serious offense;
- residential burglary;
- first degree reckless endangerment; and
- Class A and B felony drug offenses.

Unlawful possession of a firearm in the second degree encompasses every other way in which the crime can be committed under the current law.

Unlawful possession of a firearm in the second degree can also be committed by a juvenile involuntarily committed for mental health treatment pursuant to RCW 71.34.090.

The crime in the first degree is assigned a seriousness level of VII, which yields a standard sentence range of 15-20 months for a first-time offender. The crime is a class B felony, creating a maximum sentence of 10 years.

The crime in the second degree has the same penalty provisions as does the current law, i.e., a seriousness level of III and categorization as a class C felony.

If the person is also serving time for possession of a stolen firearm or stealing a firearm, the time served for unlawful possession of firearms must be served consecutively with the other offenses.

Restoring Right to Possess Firearm. The eligibility for restoring the right to possess a firearm is expanded. People with a previous conviction that subjects them to committing unlawful possession of a firearm can petition the court to re-gain their right to possess a firearm. The right can be restored if five or more consecutive years have passed without being convicted of a crime, as long as the individual has no prior felony convictions that prohibit the possession of a firearm counted as part of the offender score under RCW 9.94A.360. People with previous convictions for sex offenses or class A felonies are not eligible under this provision.

Aggravated First Degree Murder. The number of aggravating circumstances is expanded to include murders committed: in order to gain or further membership in an organization; during the course of a drive-by shooting; or, to avoid being sentenced to life imprisonment under the "Three Strikes, You're Out" Initiative. The Initiative also purports to add residential burglaries, but this addition was already made in a 1994 law (HB 2392).

Burglary. First degree burglary is no longer limited to dwellings; the crime can now be committed in any building.

Sentencing Documents and Plea Agreements. All recommended sentencing agreements and plea agreements are public documents and are to be recorded on the judgment and sentence form in cases involving violent offenses, most serious offenses, a deadly weapon finding, possession of a machine gun, possession of a stolen firearm, first degree reckless endangerment, theft of a firearm, unlawful possession of a firearm, and use of a machine gun in a felony.

In cases involving these offenses, the judgment and sentence forms shall also include a section where the judges are to record their reasons for going outside the standard sentence range.

In these same cases, the judgment and sentence forms are to be sent to the Sentencing Guidelines Commission, which must compile annual and cumulative judicial records comparing each judge's sentencing practices to the standard ranges. The commission must make these comparative records available to the public.

Prosecuting Standards. The following crimes are to be treated as crimes against persons for purposes of the recommended prosecuting standards: crimes with a deadly weapon verdict, possession of a machine gun, possession of a stolen firearm, reckless endangerment 1, theft of a firearm, unlawful possession of a firearm in the first or second degree, and use of a machine gun in a felony.

Juvenile Offenders. The Initiative indirectly increases juvenile offender penalties by raising theft of a firearm and possession of a stolen firearm to class B felonies; by creating the crime of first degree unlawful possession of a firearm and establishing that crime as a class B felony; and by expanding the definition of first degree burglary to include burglaries of all buildings, not just dwellings.

Miscellaneous. Various agencies within the criminal justice system are authorized, but not required, to notify offenders of the penalties for armed crime.

As a technical matter, three sections from the 1994 session laws are repealed, and the underlying statutes are amended in their place.

Appropriation: None.

Fiscal Note: Available.

Effective Date: If passed by the Legislature and not referred to the people for a vote, the Initiative goes into effect ninety days after adjournment of the session in which it was passed.

Testimony For: We need to send a message that armed crime will be severely punished. The costs of imposing longer sentences are justified by the benefits of

protecting the public from armed criminals. The Initiative's fiscal impact will be mitigated by the deterrent effect of the new penalties. By distinguishing between enhancements for guns and those for other deadly weapons, and further distinguishes among the three classes of felonies, the Initiative makes deadly weapon enhancements more proportional to the seriousness of the criminal act. Crimes involving guns deserve higher enhancements than those involving other deadly weapons. Armed criminals need to be held accountable for their acts and not given second chances. The highest priority is public safety. The Initiative will stop people from carrying weapons. We need to incarcerate armed criminals and keep them there for longer periods of time. A person in prison cannot harm the public. Citizens want strong solutions like this one. Increasing the length of incarceration has caused a decrease in crime rates. Judges need to be held accountable for their sentences.

Testimony Against: We already have deadly weapon enhancements. The cost of enforcing the new penalties is substantial. Corrections costs have been steadily increasing even though the crime rate has remained flat. Repressive legislation is not the answer. The death penalty is wrong and should be reserved for the most serious murders. Too much reliance has been placed on building more prisons. Deadly weapon enhancements do not deter criminals; they do not think about getting caught. Giving greater enhancements for guns than for other deadly weapons can lead to unfair results. Earned early release is an important tool for managing inmates. The Initiative might adversely impact the rights of those involuntarily committed for mental health treatment.

Testified: John Carlson, Chairman of I-159 campaign (in favor); Dave LaCourse, Coordinator of I-159 campaign (in favor); Representative Tom Campbell (in favor); Laurie Willman, victim of armed crime (in favor); Cheryl Terry, victim of armed crime (in favor); Sheryl Kinard, victim of armed crime (in favor); Perry Buck, attorney (opposed); Ed Mead, National Lawyers Guild (opposed); Tony Lee, Washington Association of Churches (opposed); John Ladenburg, Pierce County Prosecutor (in favor); Jim Krider, Snohomish County Prosecutor (in favor); Norm Maleng, King County Prosecutor (in favor); Bernardean Broadous, Thurston County Prosecutor (in favor); Larry Fehr, Washington Council on Crime and Delinquency (no position); Tom Rolfs, Department of Corrections (no position); Elizabeth Ambrose, Washington Protection and Advocacy System (opposed); Mike Patrick, Washington State Council of Police Officers (in favor); Roger Swayze, Seattle resident (opposed); and Brian Judy, National Rifle Association (in favor).